

## **§211.15**

### **§211.15 Notice and participation.**

(a) Except as provided in paragraph (c) of this section, or when the Administrator finds for good cause that notice is impractical, unnecessary, or contrary to the public interest (and incorporates the findings and a brief statement of the reasons therefore in the rules issued), an advance notice or notice of proposed rulemaking is published in the FEDERAL REGISTER and interested persons are invited to participate in the rulemaking proceedings with respect to each substantive rule.

(b) Unless the Administrator determines that notice and public rulemaking proceedings are necessary or desirable, interpretive rules, general statements of policy, and rules relating to organization, procedure, or practice, including those relating to agency management or personnel, are prescribed as final without notice or other public rulemaking proceedings.

(c) An advance notice or notice of proposed rulemaking is issued and interested persons are invited to participate in rulemaking proceedings with respect only to those procedural and substantive rules of general applicability relating to public property, loans, grants, benefits, or contracts which the Administrator has determined to be of substantial public interest.

### **§211.17 Publication and contents of notices.**

Each advance notice or notice of proposed rulemaking is published in the FEDERAL REGISTER and includes—

(a) A statement of the time, place and nature of the proposed rulemaking proceeding;

(b) A reference to the authority under which it is issued;

(c) A description of the subjects or issues involved or the substance or terms of the proposed rule;

(d) A statement of the time within which written comments must be submitted and the required number of copies; and

(e) A statement of how and to what extent interested persons may participate in the proceeding.

## **49 CFR Ch. II (10–1–10 Edition)**

### **§211.19 Petitions for extensions of time to comment.**

(a) Any person may petition the Administrator for an extension of time to submit comments in response to an advance notice or notice of proposed rulemaking. The petition must be received by the FRA Docket Clerk not later than 10 days before expiration of the time stated in the notice and must contain reference to the FRA docket number for the proceeding involved. The filing of the petition does not automatically extend the time for petitioner's comments.

(b) The Administrator grants the petition only if the petitioner shows a substantive interest in the proposed rule and good cause for the extension, and if time permits and the extension is in the public interest. Extensions will not be granted unless time permits and will not exceed one month. If an extension is granted, it is granted as to all persons and a notice of the extension is published in the FEDERAL REGISTER.

[41 FR 54181, Dec. 13, 1976, as amended at 64 FR 70195, Dec. 16, 1999]

### **§211.21 Consideration of comments received.**

All timely comments are considered before final action is taken on a rulemaking proposal. Late-filed comments will be considered so far as possible without incurring additional expense or delay.

### **§211.23 Additional public proceedings.**

The Administrator may conduct other public proceedings that he finds necessary or desirable. For example, he may invite interested persons to present oral arguments, participate in conferences, or appear at informal hearings.

### **§211.25 Hearings.**

(a) A hearing will be held if required by statute or the Administrator finds it necessary or desirable.

(b) Except for statutory hearings required to be on the record—

(1) Hearings are fact-finding proceedings, and there are no formal pleadings or adverse parties;

(2) Any rule issued in a proceeding in which a hearing is held is not based exclusively on the record of the hearing; and

(3) Hearings are conducted in accordance with section 553 of title 5, U.S.C.; section 556 and 557 of title 5 do not apply to hearings held under this part.

(c) The Administrator conducts or designates a representative to conduct any hearing held under this part. The Chief Counsel serves or designates a member of his staff to serve as legal officer at the hearing.

**§ 211.27 Publication of adopted rules and withdrawal of notices.**

Whenever the Administrator adopts a final rule or withdraws an advance notice or notice of proposed rulemaking, the final rule or a notice of withdrawal is published in the FEDERAL REGISTER.

**§ 211.29 Petitions for reconsideration of a final rule.**

(a) Any person may petition the Administrator for reconsideration of any rule issued under this part. Except for good cause shown, such a petition must be submitted not later than 60 days after publication of the rule in the FEDERAL REGISTER, or 10 days prior to the effective date of the rule, whichever is the earlier. The petition must contain a brief statement of the complaint and an explanation as to why compliance with the rule is not possible, is not practicable, is unreasonable, or is not in the public interest.

(b) If the petitioner requests consideration of additional facts, he must state the reason they were not presented to the Administrator within the allotted time.

(c) The Administrator does not consider repetitious petitions.

(d) Unless the Administrator specifically provides otherwise, and publishes notice thereof in the FEDERAL REGISTER, the filing of a petition under this section does not stay the effectiveness of a rule.

[41 FR 54181, Dec. 13, 1976, as amended at 42 FR 27593, May 31, 1977]

**§ 211.31 Proceedings on petitions for reconsideration of a final rule.**

(a) The Administrator may grant or deny, in whole or in part, any petition

for reconsideration of a final rule without further proceedings. Each petition shall be decided not later than 4 months after its receipt by the Docket Clerk. In the event he determines to reconsider a rule, the Administrator may amend the rule or initiate a new rule-making proceeding. An appropriate notice is published in the FEDERAL REGISTER.

(b) Whenever the Administrator determines that a petition should be granted or denied, a notice of the grant or denial of a petition for reconsideration is sent to the petitioner. When a petition is granted, a notice is published in the FEDERAL REGISTER.

(c) The Administrator may consolidate petitions relating to the same rule.

**§ 211.33 Direct final rulemaking procedures.**

(a) Rules that the Administrator judges to be noncontroversial and unlikely to result in adverse public comment may be published in the final rule section of the FEDERAL REGISTER as direct final rules. These include noncontroversial rules that:

(1) Affect internal procedures of the Federal Railroad Administration, such as filing requirements and rules governing inspection and copying of documents,

(2) Are nonsubstantive clarifications or corrections to existing rules,

(3) Update existing forms, and

(4) Make minor changes in the substantive rules regarding statistics and reporting requirements.

(b) The FEDERAL REGISTER document will state that any adverse comment or notice of intent to submit adverse comment must be received in writing by the Federal Railroad Administration within the specified time after the date of publication and that, if no written adverse comment or request for oral hearing (if such opportunity is required by statute) is received, the rule will become effective a specified number of days after the date of publication.

(c) If no adverse comment or request for oral hearing is received by the Federal Railroad Administration within the specified time of publication in the